NO. 42734-6-II
Cowlitz Co. Cause NO. 10-1-01214-9

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SCOTT E. COLLINS,

Appellant.

BRIEF OF RESPONDENT

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2. IS A PERSON QUALIFIED TO SERVE AS A JUROR WHEN HE OR SHE HAS NO IMPLIED AND NO ACTUAL BIASES, AND IS WILLING TO LISTEN TO THE EVIDENCE AND IMPARTIALLY DECIDE THE CASE?

3. IS THE CUMULATIVE ERROR DOCTRINE APPLICABLE WHEN THE TRIAL COURT COMMITTED NO ERRORS THAT ACCUMULATED TO DENY A DEFENDANT A FAIR TRIAL?

II. SHORT ANSWERS

1. YES. JURY INSTRUCTIONS ARE SUFFICIENT WHEN THEY CORRECTLY STATE THE LAW, ARE NOT MISLEADING, AND PERMIT THE PARTIES TO ARGUE THEIR THEORY OF THE CASE.

2. YES. A PERSON IS QUALIFIED TO SERVE AS A JUROR WHEN HE OR SHE HAS NO IMPLIED AND ACTUAL BIASES, AND IS WILLING TO LISTEN TO THE EVIDENCE AND IMPARTIALLY DECIDE THE CASE.

3. NO. THE CUMULATIVE ERROR DOCTRINE IS NOT APPLICABLE WHEN THE TRIAL COURT COMMITTED NO ERRORS THAT ACCUMULATED TO DENY A DEFENDANT A FAIR TRIAL.

III. FACTS

The appellant was charged with count one, possession of a stolen vehicle, and count two, possession of a controlled substance. On June 20, 2011, the Honorable Stephen Warning, Cowlitz County Superior Court

Judge, presided over the appellant's jury trial. 1RP at 66-182 and 2RP at 183-259.

Frank Medeiros was the first witness to testify for the State. Mr. Medeiros testified to being a long-haul truck driver and residing with his two pugs at 1420 South Pacific Avenue, Kelso, Washington. 1RP at 92-94. Mr. Medeiro's three-storied home has a full basement with two ground level windows, a garage in the back, and a driveway in the front leading to South Pacific Avenue. 1RP at 101-102.

On November 18, 2010, between 5:45 AM to 6:00 AM, Mr. Medeiros left his home to haul a load from Vancouver, Washington, to Marlboro, Maryland. 1RP at 96-97 and 131. In his drive way, Mr. Medeiros parked his white Chevy Silverado pickup. 1RP at 100, 104, and 111. The pickup had no damages and there was nothing wrong with its ignition switch and back window. The pickup's title, registration, and insurance were in the pickup's glove box. 1RP at 112-116. The key to the pickup was on a key ring with his postal key and door key, and they were left in the living room atop a book shelf next to an old Lone Ranger lunch pail. 1RP at 110-111 and 124-128. While he was away on his trip, Mr. Medeiros arranged for his friend, Earl Mitchell, to watch his home and feed his dogs twice daily. 1RP at 94, 100, and 142.

Mr. Mitchell was the second State witness to testify in the case. 1RP at 66-157. Mr. Mitchell testified that he first started watching Mr. Medeiros' home and dogs on November 19, 2010. On November 19, 2010, at about 9:30 AM, Mr. Mitchell first visited Mr. Medeiros's home and did not notice anything out of order. The pickup was in the driveway, the house and garage were secured, and there were no damages to either the pickup or house. The house was in order and there was nothing missing from the house. 1RP at 143-146.

On November 19, 2010, between 2:30 PM to 3:30 PM, Mr. Mitchell returned to check on Mr. Medeiros's home and dogs. During his second visit, Mr. Mitchell found the pickup was missing from the driveway and everything was different about the house and garage. The front door, fence, and garage were open, and one of the windows leading to the basement was broken. 1RP at 143-145. The house was a mess inside because papers were thrown all over, the downstairs closet had been rummaged through, and the dogs were loose. 1RP at 146. Mr. Mitchell called the police and notified Mr. Medeiros of the pickup being gone and the home being burglarized. 1RP at 117, 145, and 150-151.

During cross examination of Mr. Mitchell, the defense attorney asked Mr. Mitchell about some prior conflicting statements he made to Deputy Hammer. The defense attorney asked Mr. Mitchell if he

remembered talking to Deputy Hammer on November 19, 2010, and telling Deputy Hammer that he first checked on the house at 2:30 PM and did not discover the break in and the truck being gone until his second visit at 4 PM. 1RP at 147-148. Mr. Mitchell did not remember saying anything to Deputy Hammer about 2:30 PM on November 19, 2010. 1RP at 148.

Base on the defense attorney's cross examination and mention of Deputy Hammer, one of the jurors notified the court that he might know Deputy Hammer. 1RP at 152. The trial judge brought the juror into the courtroom to inquire about his fitness to remain a juror in the trial. The exchange between the judge, the State, the defense attorney, and the juror was as follow:

> Judge Warning: Yes, sir. I understand that you may know Deputy Hammer?
>
> Juror: Yes, I grew up with him.
>
> Judge Warning: Okay. And how long has it been since you have seen him?
>
> Juror: I see him spotty every once in a while he goes over to his parent's house.
>
> Judge Warning: Okay.
>
> Juror: But, maybe in passing, I think in the last year I have visually seen him twice, and just like waved to him pretty much.
>
> Judge Warning: All right. Do you know his professionally at all?

Juror: I have seen him in his car in uniform, and stuff like that, at his parent's house, pretty much.

Judge Warning: But, nothing beyond just observing him?

Juror: No, not any more.

Judge Warning: All right. Anything about that that you think creates any problem for you in evaluating him like you would any other witness?

Juror: Not at all. I just wanted to make sure it was known.

Judge Warning: All right. And how long do you think it's been since you actually palled around with him?

Juror: Fifteen years, maybe.

Judge Warning: All right. Mr. Nguyen, any questions?

Mr. Nguyen: No, I don't.

Judge Warning: Mr. Scudder, any questions?

Mr. Scudder: Do you have any concerns about him as a witness as opposed to anybody else in terms of maybe cutting him a break if he disagrees with some other witness, or - -.

Juror: I don't think so. And I - - I understand how police and, you know, sheriff's are, but - - and I trust them to protect me and everything like that, so, but I don't think - - I don't think that would hinder me. I just wanted to make sure that it was well known that, you know, the named popped up.

Mr. Scudder: So, when I was asking questions of the witness, is that when you first - - that's what kind of alerted you to Deputy Hammer?

> Juror: You had said something about - - he had said something to Deputy Hammer.
>
> Mr. Scudder: Um-hum.
>
> Juror: And I was like, wait a minute, but I think that was probably the (inaudible) I grew up with, so - -. 1RP at 152-154.

Deputy Hammer was not listed as a witness by either side. Deputy Hammer was a potential rebuttal witness for both the State and the appellant. 1RP at 71, 151-152, and 155. The defense attorney moved for a mistrial based on the juror's knowledge of Deputy Hammer. 1RP at 155.

Deputy Hammer was potentially a rebuttal witness for the State. Deputy Hammer spoke to the appellant prior to the jury trial and would be called as a rebuttal witness in the event that the appellant testified to something different than what he previously told Deputy Hammer. When the juror notified the court of his knowledge of Deputy Hammer, the appellant had yet to testify and it was uncertain whether Deputy Hammer would be called as a State rebuttal witness. 1RP at 151-152 and 155-156 and 2RP at 183.

Deputy Hammer was a potential rebuttal witness for the appellant. Deputy Hammer spoke to Mr. Mitchell prior to the jury trial. The defense attorney might call Deputy Hammer to impeach Mr. Mitchell regarding the timing of events as Mr. Mitchell previously told Deputy Hammer that on

November 19, 2010, at 2 PM, Mr. Mitchell first went to the house and there was nothing wrong, and that it was not until 4:00 PM during his second visit that Mr. Mitchell discovered the truck being gone and the house being broken into. 1RP at 155.

The trial judge denied defense's motion for mistrial because the juror's connection with Deputy Hammer was "a pretty ancient lineage at this point. It's been 15 years since the spent any time together. [The juror] indicated he didn't see any problem in evaluating [Deputy Hammer's] testimony. From the Defense standpoint, what's been presented thus far, actually his - - a favorable view of Deputy Hammer would be beneficial to the Defense." 1RP at 156.

Officer Michael Berndt of the Longview Police Department testified that on November 22, 2010, at 2:20 AM, he was asked to locate a stolen vehicle, one-ton white Chevy Dually pickup, and observed the appellant driving a vehicle matching that description in the City of Longview, County of Cowlitz, State of Washington. Mr. Medeiros did not know the appellant and the appellant did not have Mr. Medeiros' permission to possess the truck. Officer Berndt pulled behind the suspected stolen pickup, confirmed the pickup was stolen, stopped the pickup, and arrested both the appellant and another passenger in the pickup. 1RP at 116, 130-131, 167-170 and 176. Incident to the

appellant's arrest, Officer Berndt searched the appellant and found in the appellant's left front pocket a small bag with white crystal substance. 1RP at 172-173. The appellant stipulated to the white crystal substance being methamphetamine. 1RP at 181.

Officer Berndt noticed the ignition to the pickup was punched and had the pickup towed to the Longview Police Department for storage because Mr. Medeiros was out of town. 1RP at 171-172 and 176. Officers recovered and later returned to Mr. Medeiros the stolen key ring and the stolen paperwork for the pickup. The stolen key ring held Mr. Medeiros' pickup key, postal key, and home key. 1RP at 125-128 and 161. The stolen paperwork consisted of the pickup's title, insurance, and registration. 1RP at 113-114 and 164. The title to the pickup was blank because Mr. Medeiros did not sell the pickup to the appellant and did not sign away his ownership interests in the pickup. 1RP at 138 and 177-178. To sell and transfer title of a vehicle, the owner of a vehicle turns over all responsibility of the vehicle to the buyer by signing the title and releasing all his interests in the vehicle being sold. 1RP at 177-178.

On December 4, 2010, Mr. Medeiros returned from his trip to Marlboro, Maryland, and met Officer Berndt at the Longview Police Department to recover his pickup and belongings. 1RP 98-99 and 173. In the cabin of the pickup, Officer Berndt recovered a slider hammer that did

not belong to Mr. Medeiros. 1RP at 117-124 and 173-175. A slider hammer is a tool typically used to steal a vehicle because it breaks the ignition and allows a person to turn on a vehicle with a screw driver. 1RP at 161-163 and 175. The damages done to the pickup's ignition were consistent with damages caused by a slider hammer and somebody pounding something into the ignition and breaking the outer piece of the ignition switch. 1RP at 117-124 and 176. Aside from the damaged ignition, Mr. Medeiros noticed there was damage to the pickup's back window and it appeared that somebody poked a screwdriver in the back window to pry it open. 1RP 117-124.

In the bed of the pickup, Officer Berndt and Mr. Medeiros found numerous items that did not belong to Mr. Medeiros such as a bed frame, a headboard, a footboard, a fifth-wheel trailer attachment, bolt cutters, a backpack with little stuff for picking and jimmying locks, clothes, and a plastic tub with personal items. The only thing in the bed of the pickup that belonged to Mr. Medeiros was a little red lantern that was last stored in Mr. Medeiros' garage. 1RP at 117-124, 128-130, and 173-175.

When Mr. Medeiros returned home, he discovered that somebody took all of his stuff out of his filing cabinet, threw the contents onto his bed, and rummaged through the items. It appeared someone had gone through everything in the living room. The old Lone Ranger lunch pail

that was placed next to the stolen pickup key atop the book shelf was found in the driveway. 1RP at 124-125 and 128. One of the windows to the basement was broken and multiple items were taken from the house and the garage. 1RP at 128-130.

The appellant took the stand and admitted to having numerous impeachable convictions consisting of one count of burglary in the second degree, one count of theft in the second degree, one count of trafficking in stolen property in the first degree, one count of financial fraud, three counts of identity theft in the second degree, one count of forgery, three counts of possession of stolen property in the second degree, and one count of making a false statement to a public servant. 2RP at 186-187.

The appellant took ownership of the methamphetamine recovered from his person and claimed that he and his business partner, Josh Evans, bought the pickup from a man claiming to be Frank Medeiros. 2RP at 187-190, 195-197, and 200. Appellant had known Mr. Evans for six months, but he had no way of contacting Mr. Evans because the appellant did not have Mr. Evans' phone number or address. 2RP at 191, 196, 198, 201, 203, and 212. Appellant indicated that he met the seller of the pickup while shopping at AM/PM and on November 19, 2010, the appellant and Mr. Evans met the seller and paid for the pickup. The seller sold the pickup for $1500 and a fifth-wheel hitch for $300 for a total of $1800.

Appellant contributed $800 and Mr. Evans contributed $700 to the purchase of the pickup and hitch. 2RP at 187-190 and 195-197. Appellant denied there were any damages to the pickup's ignition and claimed ownership of all the stuff in the pickup, including the slider hammer. 2RP at 192 and 199.

Appellant's court testimony about buying the truck on November 19, 2010, conflicted with his prior statements to Officer Berndt and Deputy Hammer. 2RP at 189. On November 22, 2010, the Longview Police and the Cowlitz County Sheriff's Office were conducting separate investigations involving Mr. Medeiros' stolen pickup. Officer Berndt of the Longview Police Department investigated the appellant for being in possession of the stolen pickup in the city of Longview. 2RP at 205 and 209. On November 22, 2010, the appellant told Officer Berndt that he met Frank Medeiros and bought the truck from Mr. Medeiros on November 15, 2010, in a store in Kelso. 2RP at 201 and 204-206.

On November 22, 2010, Deputy Hammer of the Cowlitz County Sheriff's Office investigated the theft of the pickup from Cowlitz County. 2RP at 205 and 209. Deputy Hammer met the appellant at the Longview Police Department and the appellant told Deputy Hammer that the appellant's boss, Josh Evans, got the appellant in touch with Frank Medeiros about the pickup and that's how the appellant met Mr. Medeiros.

The appellant said he met Mr. Medeiros on November 19, 2010, and bought the pickup from Mr. Medeiros on November 20, 2010. Appellant indicated to Deputy Hammer he had no way of getting a hold of Mr. Evans. 2RP at 202-203 and 209-213.

Prior to closing arguments, the defense attorney sought to have the jury be instructed that pending possession of methamphetamine charge could not be used as evidence against the appellant's credibility based on State v. Hardy and State v. Caligar. 2RP at 218. The trial judge denied defense attorney's request. 2RP at 218.

The trial judge instructed the jury that "a separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control you verdict on any other count. Evidence that the Defendant has previously been convicted of a crime is not evidence of the Defendant's guilt. Such evidence may be considered by you in deciding weight or credibility should be given to the testimony of the Defendant, and for no other purpose." 2RP at 226.

The trial court also instructed the jury that "[i]t is a defense to a charge of possession of a controlled - - of a stolen vehicle, that the property or service was appropriated openly and avowedly under a good faith claim of title, even though the claim be untenable. Pardon me. The State has the burden of proving beyond a reasonable doubt the Defendant

did not appropriate the property openly and avowedly under a good faith claim of title. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty." 2RP at 228-229.

During closing, the State went out of order and addressed count two, possession of a controlled substance, first because the drug was found on the appellant's person, the appellant stipulated to the drug being methamphetamine, and the appellant admitted to owning the drug. 2RP at 240. After addressing count two, the State addressed count one, possession of a stolen vehicle, and the State's burden to disprove the defense of good faith claim of title. 2RP at 240-248. In summarizing up how there was no defense of good faith claim of title and concluding its closing, the State said, "[t]his isn't a case of him believing he is in ownership of it. He did not buy this vehicle. There is no Frank Medeiros who met him at AM/PM. There is no Josh Evans who referred a Frank Medeiros to him. Plain and simple, he stole the truck and he was caught in possession of it, with his hand in the cookie jar. It ties in with the drugs. I ask you to find him guilty of both charges, thank you." 2RP at 248.

The jury found the appellant guilty of count one, possession of a stolen vehicle, and count two, possession of a controlled substance. 2RP at 253-257.

IV. ARGUMENTS

1. THE TRIAL COURT CORRECTLY DENIED THE APPELLANT'S PROPOSED JURY INSTRUCTION BECAUSE IT WAS DUPLICATIVE OF OTHER JURY INSTRUCTIONS WHICH CORRECTLY STATED THE LAW, WERE NOT MISLEADING, AND PERMITTED THE PARTIES TO ARGUE THEIR THEORY OF THE CASE.

The court reviews a trial court's choice of jury instructions or refusal to give a jury instruction for abuse of discretion. State v. Douglas, 128 Wash.App. 555, 561-562 (2005), and State v. Hunter, 152 Wn.App. 30, 43 (2009).

Jury instructions are sufficient if they (1) correctly state the law, (2) are not misleading, and (3) permit counsel to argue his or her theory of the case. State v. Mark, 94 Wash.2d 520, 526 (1980). The jury instructions read as a whole must make the relevant legal standards manifestly apparent to the average juror. State v. Walden, 131 Wash.2d 469, 473 (1997), State v. David, 134 Wash.App. 470, 483 (2006), State v. Soper, 135 Wash.App. 89, 101-102 (2006), and State v. Pirtle, 127 Wash.2d 628, 656 (1995).

The trial judge correctly denied the defense attorney's request to instruct the jury that that possession of drugs should not be used by the jury to determine the appellant's credibility. The appellant's reliance on State v. Hardy, 133 Wash.2d 701 (1997), was unpersuasive. In Hardy, the

defendant was tried for robbery and the State admitted the defendant's prior drug conviction to impeach and attack the defendant's veracity. Id. at 705-706. The Washington Supreme Court held that admittance of the defendant's prior drug conviction to impeach and attack the defendant's veracity was error because the prior drug conviction was not a crime of dishonesty. Id. at 707 and 715.

Unlike Hardy, the State did not seek to introduce the appellant's prior drug conviction to impeach and attack his credibility. Count two, possession of controlled substance, was one of two pending charges before the jury. Therefore, Hardy is not dispositive. Furthermore, the instruction that the trial judge refused to give was duplicative of two other instructions that he gave to the jury, which accurately stated the law and allowed the appellant to argue his case.

The trial judge instructed the jury that "a separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control you verdict on any other count. Evidence that the Defendant has previously been convicted of a crime is not evidence of the Defendant's guilt. Such evidence may be considered by you in deciding weight or credibility should be given to the testimony of the Defendant, and for no other purpose." 2RP at 226.

Furthermore, the appellant's argument that the State impugned his credibility because of his connection to the illegal drugs is without merit. Out of the sixteen pages of the State's closing transcript, the appellant picks one line, consisting of six words, out of the State's final closing paragraph to make its claim. 2RP at 232-248. In summarizing up how there was no defense of good faith claim of title to count one and concluding its closing, the State said, "[i]t ties in with the drugs." 2RP at 248. Count two, possession of a controlled substance, was tied to count one, possession of stolen vehicle, because the appellant's arrest for being in possession of a stolen vehicle led Officer Berndt to searching the appellant and finding the methamphetamine in the appellant's front pocket.

The veracity of the appellant's testimony had nothing to do with the pending count two and everything to do with his many prior convictions for crimes of dishonesty and the inconsistencies of his stories. At no time during the State's closing did the State tell the jury that the pending count two could or should be used to judge the appellant's credibility. 2RP at 232-248. Conversely, during its closing, the State asked the jury to analyze the appellant's credibility in light of his many prior impeachable convictions. 2RP at 245.

Similarly, the State directed the jury's attention to the inconsistencies of the appellant's stories in analyzing his credibility. 2RP at 245-246. Before the jury, the appellant testified that he met Mr. Medeiros while shopping at AM/PM and bought the truck from Mr. Medeiros on November 19, 2010. 2RP at 187-190 and 195-197. Appellant denied there were any damages to the pickup's ignition. 2RP at 192 and 199. The appellant's court testimony conflicted with his prior statements to Officer Berndt and Deputy Hammer. 2RP at 189. Prior to trial, the appellant told Officer Berndt that he met Frank Medeiros and bought the truck from Mr. Medeiros on November 15, 2010, in a store in Kelso. 2RP at 201 and 204-206. Prior to trial, the appellant told Deputy Hammer that the appellant's boss, Josh Evans, got the appellant in touch with Frank Medeiros about the pickup on November 19, 2010, and the appellant bought the pickup from Mr. Medeiros on November 20, 2010. 2RP at 202-203 and 209-213.

The trial court did not abuse its discretion in refusing to give the appellant's proposed jury instruction because it was duplicative of the trial court's two other jury instructions to the jury which accurately stated the law and allowed the appellant to argue his case, and the State did not impugned the appellant's credibility with the pending possession of drug charge.

2. THE JUROR WHO KNEW DEPUTY HAMMER WAS QUALIFIED TO SERVE AS A JUROR ON THE APPELLANT'S TRIAL BECAUSE HE HAD NO IMPLIED AND NO ACTUAL BIASES, AND WAS WILLING TO LISTEN TO THE EVIDENCE AND IMPARTIALLY DECIDE THE CASE.

A trial court's decision to excuse or not excuse a jury is reviewed for abuse of discretion. State v. Hughes, 106 Wash.2d 176, 204 (1986), State v. Ashcraft, 71 Wash.App. 444, 461 (1993), State v. Rupe, 108 Wash.2d 734, 743 (1987), and State v. Noltie, 116 Wash.2d 831, 839-840 (1991). Pursuant to RCW 2.36.110, "[i]t shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service." Pursuant to CrR 6.5, "[i]f at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged." "RCW 2.36.110 and CrR 6.5 place a continuous obligation on the trial court to excuse any juror who is unfit and unable to perform the duties of a juror." State v. Jorden, 103 Wash.App. 221, 227 (2000).

Pursuant to RCW 4.44.170, a juror can be challenged for cause for either (1) implied bias or (2) actual bias. Implied bias is such a bias as

when the existence of the facts is ascertained, in judgment of law disqualifies the juror. Actual bias is the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging.

In the present case, the juror who knew Deputy Hammer had no actual bias that affected his ability to impartially decide the case. The juror was accepted by both parties and allowed to be seated on the jury panel, indicated that he could listen to the evidence and impartially decide the case, and is not being challenged on appeal for having an actual bias in the case. The only issue is whether the juror had an implied bias that required him to be excused from jury service. The appellant's claim that the trial court erred in not excusing the juror on the basis of an implied bias lacks merit.

In State v. Latham, 100 Wn.2d 59 (1983), the court summarizes that implied bias "arises when a juror has some relationship with either party; with the case itself; or has served as a juror in the same or a related action. RCW 4.44.180." Id. at 63. The court did not explore the details of what qualifying relationships a juror must have with either party under RCW 4.44.180 to have an implied bias because the facts in Latham did not

meet the qualifying relationship requirements set out in RCW 4.44.180. Id. at 61-64.

Pursuant to RCW 4.44.180, "[a] challenge for implied bias may be taken for any or all of the following causes, and not otherwise: (1) Consanguinity or affinity within the fourth degree to either party. (2) Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to a party; or being a member of the family of, or a partner in the business with, or in the employment for wages, of a party, or being surety or bail in the action called for trial, or otherwise, for a party. (3) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction. (4) Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation."

In Latham, the defendant was charged with one count of first degree arson. 100 Wn.2d at 60-61. Following his conviction, the defendant argued on appeal that the trial court erred in empaneling the juror. Id. at 62. During voir dire, the defendant "challenged two jurors, Wright and Flagel, for cause. As noted above, both individuals were

firemen. Juror Wright had spent some time in class with one of the State's witnesses. The Wright challenge was denied when Wright indicated that he could and would evaluate the case fairly. The second challenge for cause was against Jimmie Flagel. Flagel, like Wright, was acquainted with one of the State's witnesses, but when questioned, he also promised to fairly and impartially evaluate the case. [Defendant's] challenge to Flagel was denied." Id. at 63. In affirming the defendant's conviction, the court noted that the defendant wrongly assumed that he was entitled to a jury which was totally ignorant of the subject matter of the case and the witnesses. Id. at 64.

In the present case, the juror who knew Deputy Hammer had no qualifying relationships with Deputy Hammer to disqualify him from jury service on the basis of implied bias under to RCW 4.44.180. The juror's knowledge and past relationship with Deputy Hammer did not disqualify him from jury service because he was willing to listen to the evidence and impartially decide the case. 100 Wn.2d at 64. Like the two jurors in Latham who were acquainted with the one of the State's witnesses and were qualified to serve as jurors, the juror in the appellant's trial was qualified to serve as a juror because he had neither implied nor actual biases; and was willing to listen to the evidence and impartially decide the

case. Therefore, the trial court correctly denied the defense's attorney for a mistrial on the basis of the juror's fitness to serve as a juror.

3. THE TRIAL CORRECTLY DENIED THE APPELLANT'S PROPOSED JURY INSTRUCTION AND MOTION FOR MISTRIAL; THUS, THERE WAS NO ACCUMMULATION OF ERRORS TO WARRANT A REVERSAL OF THE JURY VERDICT.

The application of the cumulative error doctrine is limited to instances when there have been several trial errors that standing alone may not be sufficient to justify reversal but when combined may deny a defendant a fair trial. State v. Coe, 101 Wn.2d 772, 789 (1984). When there is no error and no resulting prejudice, there is no error that can accumulate toward the cumulative error doctrine. As indicated above, the record shows that the trial court correctly denied the appellant's proposed jury instruction and motion for mistrial. Therefore, there is no accumulation of errors that warrants a reversal of the jury verdicts.

V. CONCLUSION

The appellant's convictions should be affirmed because the trial court correctly denied the appellant's proposed jury instruction and motion for mistrial.

Respectfully submitted this 30 day of July, 2012.

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Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on July 31st, 2012.

Michelle Sasser

Michelle Sasser

COWLITZ COUNTY PROSECUTOR

July 31, 2012 - 10:31 AM

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